

FREEDOM COURT REPORTING

1

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

EASTERN DIVISION

CIVIL ACTION NUMBER: 3:05-cv-0741-WKW

BARRY BUCKHANON and RODNEY FRALEY,

Plaintiffs,

vs.

HUFF & ASSOCIATES CONSTRUCTION

COMPANY, INC.,

Defendant.

ORIGINAL

DEPOSITION OF ROBERT LEE MYERS, JR.

In accordance with Rule 5(d) of
The Alabama Rules of Civil Procedure as
Amended, effective May 15, 1988, I,
VIRGINIA DENESE BARRETT, am hereby
delivering to Mr. James R. Bowles, the
original transcript of the oral testimony
taken on the 26th day of April, 2006,
along with exhibits.

Please be advised that this is
the same and not retained by the Court
Reporter, nor filed with the Court.

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EXHIBIT

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FREEDOM COURT REPORTING

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3 EASTERN DIVISION

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5 BARRY BUCKHANON and RODNEY FRALEY,

6 Plaintiffs,

7 vs.

8 HUFF & ASSOCIATES CONSTRUCTION

9 COMPANY, INC.,

10 Defendant.

11
12 S T I P U L A T I O N

13 IT IS STIPULATED AND AGREED by

14 and between the parties through their
15 respective counsel, that the deposition of
16 ROBERT LEE MYERS, JR., may be taken before
17 Denese Barrett, Commissioner, at the
18 offices of Adams, Umbach, Davidson &
19 White, 205 South 9th Street, Opelika,
20 Alabama, on the 26th day of April, 2006.

21 IT IS FURTHER STIPULATED AND

22 AGREED that the signature to and the
23 reading of the deposition by the witness

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1 is waived, the deposition to have the same
2 force and effect as if full compliance had
3 been had with all laws and rules of Court
4 relating to the taking of depositions.

5 IT IS FURTHER STIPULATED AND
6 AGREED that it shall not be necessary for
7 any objections except as to form or
8 leading questions, and that counsel for
9 the parties may make objections and assign
10 grounds at the time of the trial, or at
11 the time said deposition is offered in
12 evidence, or prior thereto.

13 IT IS FURTHER STIPULATED AND
14 AGREED that the notice of filing of the
15 deposition by the Commissioner is waived.
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6 Plaintiffs,

7 vs.

8 HUFF & ASSOCIATES CONSTRUCTION

9 COMPANY, INC.,

10 Defendant.

11 BEFORE:

12 VIRGINIA DENESE BARRETT, Commissioner

13 APPEARANCES:

14 BOWLES & COTTLE, by Mr. James R.

15 Bowles, 2 South Dubois Avenue, Tallassee,

16 Alabama 36078, appearing on behalf of the

17 Plaintiffs.

18 RUSHTON, STAKELY, JOHNSTON &

19 GARRETT, by Mr. Ben C. Wilson, 184

20 Commerce Street, Montgomery, Alabama,

21 36104, appearing on behalf of the

22 Defendant.

23 ALSO PRESENT: Patricia Huff & John Huff

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1 ROBERT LEE MYERS, JR.

2 The witness, having been first
3 duly sworn or affirmed to speak the truth,
4 the whole truth, and nothing but the
5 truth, testified as follows:

6 EXAMINATION

7 BY MR. BOWLES:

8 Q. Would you state your name for
9 the record, please, sir?

10 A. Robert Lee Myers.

11 Q. Are you Robert Lee Myers,
12 Jr.?

13 A. Right.

14 Q. Mr. Myers, my name is Bobby
15 Bowles, and I'm a lawyer in Tallassee,
16 Alabama. I represent Barry Buckhanon and
17 Rodney Fraley in this lawsuit that they
18 filed against Huff and Associates
19 Construction Company. I'm going to be
20 asking you some questions this morning.
21 If I ask you a question that you don't
22 understand, just ask me to repeat it or
23 rephrase it for you. Okay?

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1 A. (Witness nodding head in the
2 affirmative.)

3 Q. Now, I may have to ask you
4 some questions that's kind of sensitive,
5 but that's my job and I'm going to try to
6 be courteous to you. But I just want you
7 to give me a good answer. Okay?

8 A. Now, you're going to have to
9 speak out because I am hard of hearing.

10 Q. All right. Where do you
11 currently live?

12 A. I live at Central, Alabama.

13 Q. What is your address?

14 A. It's 797 Mann Road.

15 Q. Have you ever lived at 679
16 Mann Road?

17 A. That's it right there.

18 Q. Okay. Is that a Wetumpka
19 address?

20 A. Right.

21 Q. And that's in Elmore County?

22 A. Right.

23 Q. How old are you, Mr. Myers?

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1 A. Seventy years old.

2 Q. What's your birthday?

3 A. February the 22nd, 1936.

4 Q. What is your Social Security
5 number?

6 A. 421-42-4273.

7 Q. Are you married?

8 A. Yes, sir.

9 Q. What's your wife's name?

10 A. Sandra Gates Myers.

11 Q. How long have you and your
12 wife been married?

13 A. About forty-six years.

14 Q. Have you ever been married to
15 anyone else?

16 A. Yes, sir.

17 Q. How many other women have you
18 been married to?

19 A. One more. Elizabeth Collins.

20 Q. Okay. Does she live in
21 Elmore County?

22 A. No.

23 Q. Where does she live?

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1 A. She lives in Montgomery. I
2 don't know where she is now. That's --
3 that's got away. We parted.

4 Q. Did you have any children by
5 your first wife?

6 A. Two.

7 Q. What are their names and
8 ages?

9 A. Donnie Levins and Johnny
10 Levins.

11 Q. How do you spell Levins?

12 A. L-E-V-I-N-S.

13 Q. And where do they live?

14 A. I can't answer that either.

15 Q. You don't know?

16 A. One of them lives up in
17 Kansas. But the other one, I don't know
18 where they live.

19 Q. They don't live in this area?

20 A. No.

21 Q. Okay.

22 A. No.

23 Q. Do you have any children by

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1 your current wife?

2 A. Yes, sir. I have six. Three
3 boys and three girls.

4 Q. Okay. Can you give me their
5 names and ages? Well, are they all grown?

6 A. They're all grown.

7 Q. Okay. Give me their names
8 and tell me where they live.

9 A. All right. Deborah Dew lives
10 in Wetumpka.

11 Q. Okay.

12 A. Tammy lives over where I do,
13 same thing.

14 Q. What's Tammy's last name?

15 A. Cope, C-O-P-E. And Jimmy
16 Myers, he lives about two miles from me.
17 I don't know his address.

18 Q. Okay. Who else?

19 A. Mark Myers, Mary Myers. Mary
20 lives in Slapout. I don't know Mark's
21 address.

22 Q. What's Mary's last name?

23 A. Mobley.

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1 Q. Mobley?

2 A. Right.

3 Q. Okay. I've got five children
4 here. Did I miss one?

5 A. Probably.

6 Q. Okay. I've got Deborah,
7 Tammy, Jimmy, Mark and Mary.

8 A. And Robert Myers.

9 Q. Where does Robert live?

10 A. I can't tell you that. I
11 don't know.

12 Q. He doesn't live around here?

13 A. No, sir.

14 Q. What does Deborah do for a
15 living? Does she work?

16 A. No, sir.

17 Q. What's her husband's name?

18 A. Lord, he's a Duke. That's
19 all I know. Any other time I could have
20 told you. My mind is not too good no
21 more. Anyway, he's a Duke.

22 Q. Does Tammy work?

23 A. No, sir.

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1 Q. What is her --

2 A. Her husband's name is Brad
3 Cope.

4 Q. What does he do?

5 A. He's an air condition worker.

6 Q. Okay. And where does Jimmy
7 work?

8 A. Jimmy can't work. He's got a
9 bad back. He's on disability.

10 Q. Okay. And where does Mark
11 work?

12 A. Mark don't work nowhere
13 either. He's got a bad heart.

14 Q. And does Mary work?

15 A. Yes, sir. She works for
16 Wal-Mart.

17 Q. Where?

18 A. In Prattville.

19 Q. Okay. And is she married?

20 A. Yes, sir.

21 Q. What is her husband's name?

22 A. Mr. Mobley. Andy Mobley.

23 Q. What does he do?

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1 A. He works for a tree service.

2 Q. And what does Robert Myers
3 do?

4 A. I don't know. We don't ever
5 see him. He disappeared on us.

6 Q. Okay.

7 A. He comes by about twice a
8 year. That's about it.

9 Q. How far did you go in school,
10 Mr. Myers?

11 A. Ninth grade.

12 Q. Okay. Did you ever go back
13 and get your GED?

14 A. In the Marine Corps.

15 Q. And when did you serve in the
16 Marine Corps?

17 A. Oh, back '52, '53.

18 Q. Did you go to Korea?

19 A. Yes, sir. We just went in
20 there for a few days and was out.

21 Q. How long were you in the
22 service?

23 A. Three years.

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1 Q. Okay. Did you get an
2 honorable discharge?

3 A. Yes, sir.

4 Q. Have you had any education or
5 schooling past the ninth grade?

6 A. No. All I got was in the
7 Marine Corps. That finished my education
8 up.

9 Q. Did you ever go to a trade
10 school or anything like that?

11 A. No, sir.

12 Q. Okay.

13 A. Back then you didn't have the
14 time.

15 Q. Okay. Are you currently
16 employed?

17 A. No, sir.

18 Q. Are you retired?

19 A. I'm retired.

20 Q. When did you retire?

21 A. Oh, September.

22 Q. Of last year?

23 A. Right.

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1 Q. And where were you working at
2 the time you retired?

3 A. Mr. Huff. Huff and
4 Associates.

5 Q. Is that Huff and Associates
6 Construction Company?

7 A. Right.

8 Q. What was your position with
9 Huff and Associates Construction Company
10 at the time of your retirement?

11 A. Superintendent.

12 Q. How long had you been working
13 for Huff and Associates at that time?

14 A. Roughly twenty years.

15 Q. Okay. What year did you
16 first go to work with Huff and Associates?

17 A. Oh, 1980 I believe is when.

18 Q. Just give me your best
19 judgment about it.

20 A. About 1980.

21 Q. I saw something in a document
22 where you might have gone to work with
23 them in 1994. Would that be incorrect?

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1 A. Well, that's the second time
2 I went with them.

3 Q. Okay.

4 A. I left for a while.

5 Q. The first time was about
6 1980?

7 A. Right.

8 Q. And how long did you work
9 with them before you left the company?

10 A. Probably two years.

11 Q. And how long did you stay
12 gone before you went back?

13 A. Several years there. Five or
14 six years.

15 Q. Okay. Would it be fair to
16 say you went back in 1994?

17 A. Right.

18 Q. Okay. And did you work with
19 Huff and Associates continuously from 1994
20 up until your retirement?

21 A. Right.

22 Q. Okay. What was your position
23 during the years 1994 up until your

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1 retirement?

2 A. Superintendent.

3 Q. Okay. Now, what is your
4 understanding of a superintendent's
5 duties? What did you do?

6 A. Tried to build a building.

7 Q. Okay. Well, I mean, were you
8 the man in charge on the job site?

9 A. Right.

10 Q. Okay. You were the highest
11 ranking employee of the company on the job
12 site?

13 A. Right.

14 Q. Okay. Have you -- has your
15 entire adult life pretty much been in the
16 construction field?

17 A. Yes, sir.

18 Q. I've also heard that you
19 might be a lay preacher; is that correct?

20 A. Right.

21 Q. Where do you preach?

22 A. Just wherever they need me
23 now.

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1 Q. Okay. Do you have a church?

2 A. I preached at a church -- not
3 no regular church. I preached at one
4 church fifteen years.

5 Q. Where was that?

6 A. Kendricks Baptist Church.

7 Q. What's the name of it?

8 A. Kendricks Baptist Church.

9 Q. Where is that located?

10 A. Nixburg.

11 Q. Well, I have to ask you where
12 is Nixburg?

13 A. On Highway 9 just below
14 Alexander City.

15 Q. Okay. Is that in Elmore
16 County?

17 A. No, sir. It was up in Coosa
18 County.

19 Q. Coosa County. Okay. And you
20 were the pastor there for fifteen years?

21 A. Right.

22 Q. Were you a full-time pastor?

23 A. Full-time pastor.

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1 Q. You were the only pastor they
2 had?

3 A. Right.

4 Q. Okay. How big a church was
5 that?

6 A. Oh, congregation usually run
7 about forty, forty-five, somewhere around
8 in that area.

9 Q. I may have missed this. Did
10 you say that was a Baptist church?

11 A. Right.

12 Q. Okay. Were you ordained as a
13 Baptist minister?

14 A. Right.

15 Q. Okay. And when were you
16 ordained?

17 A. In 1990.

18 Q. Okay. Are you still
19 preaching?

20 A. Yes, sir.

21 Q. Where do you preach now?

22 A. Wherever they want me.

23 Q. Well, I mean, do you just

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1 wait for someone to call you to fill in?

2 A. Most of the time somebody
3 will call me during the week, and I'll go
4 preach for them.

5 Q. Okay.

6 A. I don't want a regular
7 church. I'm not trying to get out of it,
8 but I don't want a regular church.

9 Q. Okay. About how often do you
10 preach in a month's time?

11 A. Two, three times.

12 Q. Okay. Have you ever attended
13 any theological schools?

14 A. I don't think so.

15 Q. Okay. Or religious schools?

16 A. No, sir. I just come up
17 under a bunch of preachers.

18 Q. Okay. Do you consider
19 yourself to be a religious man?

20 A. I hope so.

21 Q. Do you know the plaintiff in
22 this case, Barry Buckhanon?

23 A. Yes, sir.

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1 Q. Okay. How long have you
2 known Barry Buckhanon?

3 A. Oh, he was brought on my job.

4 Q. Do you recall the first time
5 you ever met Barry Buckhanon?

6 A. Yes, sir. When they brought
7 him up there to get him a job.

8 Q. Would that have been in 2004?

9 A. That's right.

10 Q. Who brought him up there?

11 A. Lord have mercy. It was one
12 of the white fellows that I'd hired.

13 Q. Was his name Robert Connell?

14 A. Right. That's him.

15 Q. Did Mr. Connell bring Barry
16 Buckhanon to your job site?

17 A. Right.

18 Q. And what was said to you at
19 that time about Barry Buckhanon? Did he
20 just want a job?

21 A. He just wanted a job.

22 Q. Did you hire him?

23 A. Yeah.

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1 Q. Okay. And what did you hire
2 him as? A laborer?

3 A. As a laborer.

4 Q. And do you remember about
5 when he went to work for Huff and
6 Associates?

7 A. No, sir, I don't.

8 Q. Okay. Well, let's make this
9 clear. When you hired him, you were
10 hiring him for Huff and Associates, right?

11 A. Right.

12 Q. And what job site did you
13 assign Mr. Buckhanon to?

14 A. KA House. What he done on
15 the job? Any type of labor work we had to
16 do.

17 Q. You just put him to work at
18 the Kappa Alpha House at Auburn
19 University?

20 A. Right.

21 Q. And would that have been in
22 early June of 2004?

23 A. That's right.

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1 Q. Do you know the other
2 plaintiff in this case, Rodney Fraley?

3 A. Yeah.

4 Q. When did you first meet
5 Rodney Fraley?

6 A. Same time.

7 Q. Okay. Did Rodney Fraley and
8 Barry Buckhanon come to you at the same
9 time?

10 A. Right.

11 Q. And Robert Connell brought
12 both of them to you?

13 A. Right.

14 Q. And did you hire Rodney
15 Fraley as well as Barry Buckhanon?

16 A. Right.

17 Q. Did you also put Rodney
18 Fraley to work at the KA House --

19 A. Right.

20 Q. -- at Auburn University?

21 A. Right.

22 MR. WILSON: Let him finish

23 first. Let him finish his

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1 question. Okay. Y'all are
2 kind of talking over each
3 other.

4 Q. Okay. Did you put Rodney
5 Fraley to work at the KA House the same as
6 you did Barry Buckhanon?

7 A. That's right.

8 Q. And did you hire Rodney
9 Fraley as a laborer as well?

10 A. Well, I really hired him to
11 help the carpenters.

12 Q. So he was a carpenter's
13 helper?

14 A. Right.

15 Q. Do you make a distinction
16 between a laborer and a carpenter's
17 helper?

18 A. Well, there's not too much
19 difference. On that carpenter's helper,
20 he's supposed to help the carpenters. A
21 laborer is supposed to clean up or
22 whatever is there to do.

23 Q. And to reiterate, were you

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1 the superintendent on the job site at the
2 KA House at Auburn University?

3 A. Right.

4 Q. What was Huff and Associates
5 hired to do at the KA House?

6 A. To build it.

7 Q. Going to build a brand new
8 one?

9 A. Right.

10 Q. Do you remember when you
11 started that job?

12 A. Oh, I started it in 2003. I
13 hired them in 2004.

14 Q. When did you finish the job?

15 A. 2006. In about February,
16 March.

17 Q. Okay. And, again, were you
18 the highest ranking employee of Huff and
19 Associates on that job site at the KA
20 House?

21 A. Right.

22 Q. And were you the highest
23 ranking employee from the time the job

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1 started up until the time it was finished?

2 A. Right.

3 Q. I know the number of
4 employees probably fluctuated a little bit
5 during the construction of that fraternity
6 house. But approximately how many
7 employees did Huff and Associates have
8 working on that job site at any one time?

9 A. Probably about six.

10 Q. Six full-time people?

11 A. Right.

12 Q. Does that include yourself?

13 A. Right.

14 Q. Does it include Barry
15 Buckhanon and Rodney Fraley?

16 A. Right.

17 Q. You mean you just had six
18 people working on a project that big?

19 A. That's all I had.

20 Q. Okay. Who were the other
21 employees on that job site?

22 A. I'd have to go back on the
23 time sheets to see. But I had Travis

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1 Gilson.

2 Q. What was Mr. Gilson's job?

3 A. He's a carpenter.

4 Q. Okay. Did he work there the
5 whole time that the house was being built?

6 A. No, sir. Travis got him a
7 part-time job, and he was -- and he
8 started using our job as a part-time job.
9 He'd work there about one or two days a
10 week. Well, I couldn't stand that. I had
11 to let him go. And I had Mark Myers. He
12 worked there probably a third of the time
13 that we was going on.

14 Q. Now, is that your son?

15 A. Right.

16 Q. Okay. What was Mark's job?

17 A. Carpenter.

18 Q. Okay. Did he work there the
19 whole time?

20 A. No, sir. He only worked
21 there about a third of the time.

22 Q. Okay. And who else worked
23 there?

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1 A. And, Lord, I don't know. I
2 had Jimmy Langley. He worked there about
3 a third of the time.

4 Q. What was his job?

5 A. On the KA House, yeah.

6 Q. What was his job?

7 A. Oh, he was a carpenter. '

8 Q. Okay. Anyone else?

9 A. That's about it as far as I
10 can -- I worked some Mexicans, but they
11 didn't stay that long. They moved them to
12 another job.

13 Q. Who moved them?

14 A. Mr. Huff and them.

15 Q. Okay. Did you have any brick
16 masons or block masons on that job?

17 A. They were subs.

18 Q. Okay. So the six people that
19 you were referring to were all employees
20 of Huff and Associates?

21 A. Of Huff and Associates.

22 Q. But there were other people
23 working out there?

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1 A. Oh, yeah.

2 Q. But they were subcontractors?

3 A. Right.

4 Q. And they were not under your
5 direct supervision, were they?

6 A. No, sir. Not exactly under
7 mine. I try to keep it laid out in front
8 of me and keep them going. That's all I
9 done for them.

10 Q. Out of the employees that
11 Huff and Associates had working on the KA
12 House in June and July of 2004, how many
13 of them were black?

14 MR. WILSON: Just in that time
15 frame?

16 MR. BOWLES: Well, yes.

17 A. Probably one.

18 Q. And who was that?

19 A. Ervin -- Lord, I can't even
20 think of his last name now. Ervin was a
21 good worker. He just couldn't keep his
22 mouth shut.

23 Q. Okay. Well, of course,

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1 Rodney Fraley and Barry Buckhanon were
2 working there, weren't they?

3 A. Yeah.

4 Q. And they were black?

5 A. They were black.

6 Q. Okay. Did you have any
7 Mexican or Hispanic workers working there?

8 A. Yes, sir. I had a couple
9 Spanish ones, one that finished the job
10 over there. I can't remember their names
11 either.

12 Q. Did you have any white
13 employees other than James Langley and
14 Travis Gilson?

15 A. And Mark Myers.

16 Q. Mark Myers?

17 A. That's about it.

18 Q. So you had about three black
19 employees, three white employees and a
20 couple of Mexicans?

21 A. Right.

22 Q. During the time that Barry
23 Buckhanon and Rodney Fraley were working

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1 under your supervision at the KA House,
2 did you ever use the word nigger in their
3 presence?

4 A. Not that I can remember.

5 Q. Okay. If Barry Buckhanon and
6 Rodney Fraley said they overheard you say
7 I ain't going to put up with a bunch of
8 ignorant niggers on my job, would they be
9 lying?

10 A. No, sir. I did not say that.

11 Q. Okay. So --

12 MR. WILSON: Listen to his
13 question. Go ahead.

14 Q. If Barry Buckhanon and Rodney
15 Fraley said that you said that, would they
16 be lying?

17 A. Yes.

18 Q. Okay. So you deny making a
19 statement like that; is that correct?

20 A. That's right.

21 Q. In speaking directly to Barry
22 Buckhanon and Rodney Fraley, have you ever
23 said, Your kind don't know anything?

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1 A. That's quite not the way I
2 put it.

3 Q. How did you put it?

4 A. We were trying to get some
5 work done. I told them -- three times I
6 told them this. You don't know nothing
7 about what we're doing. And they didn't.

8 Q. Okay. You never said these
9 words, quote, Your kind don't know
10 anything, when you were addressing
11 Buckhanon and Fraley?

12 A. No, sir. No, sir. I told
13 them about what we were doing.

14 Q. Okay. In referring to
15 another black employee on the job site,
16 have you ever said in the presence of
17 Barry Buckhanon and Rodney Fraley these
18 words, Niggers like him don't know
19 anything?

20 A. No, sir.

21 Q. Do you deny making that
22 statement?

23 A. Yes, sir. I deny that.

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1 Q. Do you routinely use racial
2 slurs in referring to black employees?

3 A. No, sir.

4 Q. How about when you're
5 referring to black folks in general?

6 A. No.

7 Q. Do you routinely call black
8 folks niggers?

9 A. No.

10 Q. If people said that you did
11 on the job site, they would be lying,
12 right?

13 A. Right.

14 Q. Do you see anything wrong in
15 using the word nigger?

16 A. I don't see nothing wrong
17 with it.

18 Q. Okay. How do you think it
19 makes black folks feel when they hear
20 people call them niggers?

21 A. I don't know. They was
22 calling them niggers in the Bible.

23 Q. Well, do you think that's

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1 acceptable?

2 A. Huh?

3 Q. Do you think that's
4 acceptable?

5 A. I can't answer that.

6 Q. Are you saying the Bible --

7 A. I don't call them black
8 people -- I mean niggers. I call them
9 black people.

10 Q. Are you telling me that the
11 Bible says that it's all right to call
12 black folks niggers?

13 A. I'm telling you the Bible
14 called them niggers.

15 Q. Can you give me a passage
16 that says that?

17 A. Go to Acts 13, first verse,
18 first paragraph

19 Q. Acts what?

20 A. Acts 13.

21 Q. Chapter 13?

22 A. Right.

23 Q. What verse; do you know?

FREEDOM COURT REPORTING

35

1 A. Yeah. First verse.

2 Q. Okay. And that's the King
3 James version?

4 A. Right.

5 Q. Do you consider yourself a
6 racist?

7 A. No, sir.

8 Q. Do you feel like you as a
9 white person are superior to black people?

10 A. No, sir.

11 Q. Do you feel like you as a
12 white person are superior to Hispanic
13 people?

14 A. No, sir.

15 Q. Have you got any black
16 friends?

17 A. Yes, sir.

18 Q. Can you name some of them?

19 A. I've got all the George
20 Warren family. Been knowing them for
21 years.

22 Q. Where does George Warren
23 live?

FREEDOM COURT REPORTING

36

1 A. He's a concrete finisher.

2 Q. He's a what?

3 A. Concrete finisher.

4 Q. Okay. And where does he
5 live?

6 A. Right now he's not doing
7 anything. He had a stroke.

8 Q. Okay. Does he work for Huff
9 and Associates?

10 A. He used to. But he always
11 subbed.

12 Q. How could I find him today?

13 A. Just look in the telephone
14 book. George Warren.

15 Q. In what city?

16 A. Right here in Auburn.

17 Q. Have you got any other black
18 friends other than George Warren?

19 A. Yeah. But I can't think of
20 their names. Ervin is a good friend of
21 mine. Cartlidge. That's his name. He's
22 a good friend of mine.

23 Q. Where does he live?

FREEDOM COURT REPORTING

37

1 A. He's a laborer on the job.

2 Q. Okay. Now, when you say good
3 friends, do y'all ever socialize together?

4 A. Used to.

5 Q. What do you do together?

6 A. Well, we've ate dinner
7 together several times. We just -- we
8 were just good friends.

9 Q. Have you ever been to his
10 home?

11 A. Oh, yeah.

12 Q. And you've had dinner at his
13 house?

14 A. No, sir. I never ate at his
15 house.

16 Q. Okay. Where did y'all eat
17 together?

18 A. Went up here at the little
19 restaurant.

20 Q. While you were on the job?

21 A. Yeah. Walter Groves was
22 another one. That's a brick mason.

23 Q. What's that last name?

FREEDOM COURT REPORTING

38

1 A. Walter Groves.

2 Q. Can you spell that last name?

3 A. G-R-O-V-E-S.

4 Q. And where does he live?

5 A. I don't know that.

6 Q. Does he live here in Lee

7 County?

8 A. No, sir. Yeah. I believe he
9 does live in Lee County.

10 Q. Okay.

11 A. May live in Notasulga now.

12 Q. Have you ever made any
13 insulting and denigrating comments to the
14 Hispanic workers working on your job site?

15 A. No, sir.

16 Q. Have you ever told these
17 Hispanic workers that they didn't know
18 nothing, they need to go back to Mexico?

19 A. No. I didn't say they didn't
20 know nothing.

21 Q. Have you ever told them they
22 need to go back to Mexico?

23 A. In joking sometimes they'd

FREEDOM COURT REPORTING

39

1 mess up and I'd say, What you need to do
2 is go on back to Mexico. Yes, I did.

3 Q. And you say it was said in a
4 joking manner?

5 A. Yeah.

6 Q. Do you routinely swear and
7 curse while you're supervising your
8 employees?

9 A. No, I did not. I don't curse
10 nobody, and I don't want nobody cursing
11 me.

12 Q. Is it your testimony that you
13 don't use profane language?

14 A. No, sir.

15 Q. You do not?

16 A. I do not.

17 Q. And if some of your former
18 employees said that you did, they'd be
19 lying?

20 A. Yes, they would.

21 Q. Have you ever ridiculed and
22 insulted your employees?

23 A. I don't think so.

FREEDOM COURT REPORTING

40

1 Q. When was the last time you
2 used the word nigger referring to a black
3 person?

4 A. I don't use the word nigger.

5 Q. Okay. You've never used it?

6 A. No. That's something I try
7 not to use.

8 Q. Okay. Let me show you a
9 couple of documents here, Mr. Myers. The
10 first one is what I've marked as
11 Plaintiffs' Exhibit Number 1 and I'd ask
12 you if you've ever seen that document
13 before?

14 A. That was --

15 MR. WILSON: Listen to him. He
16 wants to know if you've
17 seen it.

18 A. Yes. I've seen it.

19 Q. Okay. What is that?

20 A. That's a separation from the
21 job.

22 Q. Okay. For who?

23 A. For Barry Buckhanon.

FREEDOM COURT REPORTING

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1 Q. And did you sign that
2 document?

3 A. Right there.

4 Q. Okay. And what were the
5 circumstances under which Mr. Buckhanon
6 left that job?

7 A. Well, he said he could do it.
8 I let him go once before because of the
9 same thing. But he got to staggering
10 around. He can't hardly walk. Somebody
11 like that don't need to be on the job.

12 Q. What do you mean? Was he
13 intoxicated?

14 A. No. His legs wouldn't --
15 wouldn't carry him. I sent him up the
16 stairs to get something another, and it
17 looked like he was going to fall before he
18 got back down. I can't take that chance.

19 Q. Okay. I believe you said he
20 went to work there in early June of 2004?

21 A. Right.

22 Q. Did you terminate him at some
23 point after that the first time?

FREEDOM COURT REPORTING

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1 A. I terminated him right here.

2 Q. Okay. You said you had let
3 him go once before?

4 A. I let him go home. And he
5 come back up there and spent a whole day
6 trying to get back on before I sent this
7 sheet in to the office.

8 Q. Okay. So you only fired him
9 one time, right?

10 A. Right.

11 Q. Okay. But you had sent him
12 home once before?

13 A. Right.

14 Q. And what did you send him
15 home for?

16 A. Same thing. He had a hard
17 time walking.

18 Q. Okay. Did he have some sort
19 of disability?

20 A. His legs. There was
21 something another wrong with his legs.

22 Q. Okay. And what happened the
23 second time when you actually fired him?

FREEDOM COURT REPORTING

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1 A. When he went up the stairs,
2 he come back down them stairs and he was
3 staggering from one side to the other and
4 his leg was giving him trouble. I
5 realized he couldn't do it. If I would
6 have kept him, sooner or later we would
7 have wound up in a lawsuit with that.

8 Q. Did you tell him at that time
9 that you were firing him?

10 A. I told him to go home. I
11 didn't need him no more.

12 Q. Now, Barry Buckhanon says you
13 told him to take tomorrow off?

14 A. I told him I didn't need him
15 no more. That's the first time. I did
16 tell him that. But he come right on back
17 anyway and kept on begging to get back on.
18 Make sure he got his job back.

19 Q. Okay. Well, the second time,
20 did you actually tell him straight out,
21 I'm firing you or I'm terminating you?

22 A. No. I told him I won't need
23 you no more. That's exactly the words I

FREEDOM COURT REPORTING

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1 told him.

2 Q. Okay. Did you ever pick up
3 Barry Buckhanon and Rodney Fraley in
4 Tallassee and haul them over here to
5 Auburn to work?

6 A. Several times.

7 Q. Okay. And after you had
8 terminated Mr. Buckhanon, did you drive by
9 him one morning when he was standing out
10 there waiting on you to pick him up?

11 A. No. I didn't see him. He
12 wasn't out there. I told him not to come
13 in.

14 Q. Okay. Did you pick up Rodney
15 Fraley that morning?

16 A. Seems like I did pick him up
17 a couple times.

18 Q. Did you ever tell Rodney
19 Fraley that you had fired Barry Buckhanon?

20 A. I didn't tell him I fired
21 him. I told him I let him go.

22 Q. Okay. And how long did
23 Rodney Fraley work for you after that?

FREEDOM COURT REPORTING

45

1 A. One day.

2 Q. And what happened to him?

3 A. He left.

4 Q. Did he just quit?

5 A. (Witness nodding head in the
6 affirmative.)

7 Q. Do you know why he quit?

8 A. No, sir. I never did.

9 Q. Let me show you what I've
10 marked as Plaintiffs' Exhibit Number 2 and
11 ask you if you've ever seen that document
12 before?

13 A. Yeah.

14 Q. What is that?

15 A. That's Rodney Fraley. He
16 quit.

17 Q. Okay. Did you sign this
18 document?

19 A. Right.

20 Q. Okay. And let me show you
21 what I've marked as Plaintiffs' Exhibit
22 Number 3 and ask if you've ever seen that
23 document?

FREEDOM COURT REPORTING

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1 A. Yes, sir.

2 Q. What is that?

3 A. Bobby Nichols, he quit.

4 Q. Okay. Do you know why he
5 quit?

6 A. No.

7 Q. Let me show you what I've
8 marked as Plaintiffs' Exhibit Number 4 and
9 ask if you recognize that document?

10 A. Now, he quit because he
11 got --

12 MR. WILSON: He just asked if
13 you recognize the document

14 A. Yeah. I recognize it.

15 Q. What is it?

16 A. That's where he quit.

17 Q. Okay. Is this on John
18 McDade?

19 A. But he got in trouble with
20 the law.

21 Q. I said is this on John
22 McDade?

23 A. Yeah.

FREEDOM COURT REPORTING

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1 Q. Okay. Now, go ahead and
2 finish your answer.

3 A. But he got in trouble with
4 the law, and he was never -- we couldn't
5 pick him up.

6 Q. Who couldn't pick him up?

7 A. Nobody could. He was in
8 jail.

9 Q. Okay. Well, did he quit?

10 A. Yeah.

11 Q. Mr. McDade quit?

12 A. (Witness nodding head in the
13 affirmative.)

14 Q. Do you know why he quit? Was
15 it because he was in jail?

16 A. Yeah.

17 Q. Let me show you what I've
18 marked as Plaintiffs' Exhibit 5 and ask
19 you if you recognize that?

20 A. Yes, sir. He quit.

21 Q. Who is that?

22 A. That's Robert Connell.

23 Q. Do you know why he quit?

FREEDOM COURT REPORTING

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1 A. No.

2 Q. Did you sign this document?

3 A. Right.

4 Q. Did you sign all of these
5 documents that I've marked as Plaintiffs'
6 Exhibits 1 through 5?

7 A. Right.

8 Q. Okay. All of these people
9 worked under your supervision?

10 A. Correct. Right.

11 Q. Let me show you what I've
12 marked as Plaintiffs' Exhibit Number 6 and
13 ask you if you recognize that document?

14 A. Travis Gilson?

15 Q. Yes.

16 A. Travis got to where he wasn't
17 -- yeah, I recognize it.

18 Q. Why did Mr. Gilson quit?

19 A. He was working with his
20 cousin or some of his kinfolks over the
21 week. He'd come over here and work one or
22 two days, and that was it.

23 Q. Have you had a lot of

FREEDOM COURT REPORTING

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1 turnover in the people that work under
2 you?

3 A. Just that one job.

4 Q. Do you know where James
5 Langley is living or working these days?

6 A. James Langley is not working
7 right now. He got hurt on the job.

8 Q. Do you know where he lives?

9 A. No, sir. I don't know the
10 address.

11 Q. Does he live in Tallassee?

12 A. Yeah.

13 Q. Is he a friend of yours?

14 A. Just working friend.

15 Q. Have you talked to any of
16 these people that are listed on
17 Plaintiffs' Exhibits 1 through 6 since
18 this lawsuit was filed?

19 A. No.

20 MR. BOWLES: Okay. I believe
21 that's all, Mr. Myers.

22 Thank you, sir.

23 MR. WILSON: Okay. That's it.

FREEDOM COURT REPORTING

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1 MR. BOWLES: I'd like to offer
2 Plaintiffs' Exhibits 1
3 through 6 as attachments to
4 the deposition.
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FREEDOM COURT REPORTING

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CERTIFICATE

STATE OF ALABAMA

ELMORE COUNTY

I hereby certify that the above and foregoing deposition was taken down by me in stenotype and the questions and answers thereto were transcribed by means of computer-aided transcription, and that the foregoing represents a true and correct transcript of the testimony given by said witness upon said hearing.

I further certify that I am neither of counsel, nor of kin to the parties to the action, nor am I in anywise interested in the result of said cause.

Virginia Denese Barrett

VIRGINIA DENESE BARRETT

MY COMMISSION EXPIRES 5/19/07

www.freedomreporting.com

1-877-373-3660

DATE: <u>7-30-04</u>		EMPLOYEE SEPARATION NOTICE	
NAME <u>Barey L. Buckhannon</u>		DEPARTMENT	EFFECTIVE DATE <u>7-26-04</u>
EMPLOYEE NUMBER <u>812</u>	SOCIAL SECURITY NUMBER <u>417-08-9539</u>	PAYROLL CLASSIFICATION <u>Carpenter</u>	FILE NUMBER
REASON		COMMENTS	
<input type="checkbox"/> NO WORK <input type="checkbox"/> ABSENCE <input type="checkbox"/> SICKNESS <input type="checkbox"/> DEATH <input checked="" type="checkbox"/> DISCHARGED <input type="checkbox"/> QUIT <input type="checkbox"/> OTHER _____		<u>unable to perform assigned jobs</u> 	
THIS FORM MUST BE COMPLETED AND FILED WITH OFFICE IMMEDIATELY UPON RELEASE OF EMPLOYEE		X EMPLOYEE SUPERVISOR <u>D. G. Meyer</u> DEPARTMENT SUPERVISOR	DATE <u>7-30-04</u> PERSONNEL DEPARTMENT DATE <u>7-30-04</u>
		PAYROLL DEPARTMENT DATE <u>7-30-04</u>	PERSONNEL DEPARTMENT DATE <u>7-30-04</u>

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Employee Health Ins. (or Misc. Ded.) Recap Done? (CIRCLE ONE) YES / NO / N/A

EMPLOYEE FILE COMPLETED:

DATE _____

INITIALS _____

**PLAINTIFF'S
EXHIBIT**
1

DATE: <u>7-30-04</u>		EMPLOYEE SEPARATION NOTICE	
NAME <u>Rodney J. Freley</u>		DEPARTMENT	EFFECTIVE DATE <u>7-27-04</u>
EMPLOYEE NUMBER	SOCIAL SECURITY NUMBER <u>130-56-8840</u>	PAYROLL CLASSIFICATION	FILE NUMBER
REASON		COMMENTS	
<input type="checkbox"/> NO WORK <input type="checkbox"/> ABSENCE <input type="checkbox"/> SICKNESS <input type="checkbox"/> DEATH <input type="checkbox"/> DISCHARGED <input checked="" type="checkbox"/> QUIT <input type="checkbox"/> OTHER _____			
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		PERSONNEL DEPARTMENT	DATE
		DEPARTMENT SUPERVISOR	DATE <u>7-30-04</u>
		PAYROLL DEPARTMENT <u>Deborah Stow</u>	DATE <u>7-30-04</u>

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EMPLOYEE SEPARATION NOTICE			
DATE: _____			
NAME <u>Bobby Nichols</u>		DEPARTMENT	EFFECTIVE DATE <u>9/30/04</u>
EMPLOYEE NUMBER	SOCIAL SECURITY NUMBER	PAYROLL CLASSIFICATION	FILE NUMBER
REASON		COMMENTS	
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		PERSONNEL DEPARTMENT	DATE
		DEPARTMENT SUPERVISOR	DATE
		PAYROLL DEPARTMENT <u>[Signature]</u>	DATE

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PLAINTIFF'S
EXHIBIT

3

EMPLOYEE SEPARATION NOTICE			
DATE: _____			
NAME <u>John Mc Dade</u>		DEPARTMENT	EFFECTIVE DATE <u>7/15/04</u>
EMPLOYEE NUMBER	SOCIAL SECURITY NUMBER	PAYROLL CLASSIFICATION	FILE NUMBER
REASON <input type="checkbox"/> NO WORK <input type="checkbox"/> ABSENCE <input type="checkbox"/> SICKNESS <input type="checkbox"/> DEATH <input type="checkbox"/> DISCHARGED <input checked="" type="checkbox"/> QUIT <input type="checkbox"/> OTHER _____		COMMENTS	
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		PAYROLL DEPARTMENT <u>Richard Stone</u> DATE	

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**PLAINTIFF'S
EXHIBIT**
4

EMPLOYEE SEPARATION NOTICE			
DATE: _____			
NAME <i>Robert Connell</i>		DEPARTMENT	EFFECTIVE DATE <i>7/05/04</i>
EMPLOYEE NUMBER	SOCIAL SECURITY NUMBER	PAYROLL CLASSIFICATION	FILE NUMBER
REASON <input type="checkbox"/> NO WORK <input type="checkbox"/> ABSENCE <input type="checkbox"/> SICKNESS <input type="checkbox"/> DEATH <input type="checkbox"/> DISCHARGED <input checked="" type="checkbox"/> QUIT <input type="checkbox"/> OTHER _____ 		COMMENTS	
THIS FORM MUST BE COMPLETED AND FILED WITH OFFICE IMMEDIATELY UPON RELEASE OF EMPLOYEE		EMPLOYEE SUPERVISOR <i>Bobby Myers</i> DEPARTMENT SUPERVISOR	DATE PERSONNEL DEPARTMENT DATE
		DATE PAYROLL DEPARTMENT <i>Deborah Stow</i> DATE	

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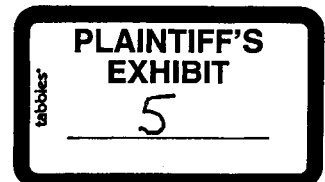
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EMPLOYEE SEPARATION NOTICE											
DATE: _____											
NAME <u>Travis Gilson</u>		DEPARTMENT									
		EFFECTIVE DATE <u>6/24/2004</u>									
EMPLOYEE NUMBER	SOCIAL SECURITY NUMBER	PAYROLL CLASSIFICATION	FILE NUMBER								
REASON		COMMENTS									
<input type="checkbox"/> NO WORK <input type="checkbox"/> ABSENCE <input type="checkbox"/> SICKNESS <input type="checkbox"/> DEATH <input type="checkbox"/> DISCHARGED <input checked="" type="checkbox"/> QUIT <input type="checkbox"/> OTHER _____		_____ _____ _____ _____ _____ _____ _____ _____ _____ _____									
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